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Supreme Court, U.S.
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No. 01-1824

In The

Supreme Court of the United States

RICHLAND BOOKMART, INC.,
D/B/A TOWN AND COUNTRY,

Petitioner,

v.

RANDALL E. NICHOLS,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Sixth Circuit correctly hold, applying the intermediate scrutiny test, that the Tennessee Adult-Oriented Establishment Act (1995 Tenn. Pub. Acts, Ch. 421) does not violate the First Amendment, because the Tennessee legislature reasonably relied on the experiences of other jurisdictions in restricting the hours of operation of certain types of adult-oriented establishments as a means of reducing deleterious secondary effects?

2. Does the limited exemption from Chapter 421's hours of operation restrictions for certain adult-oriented establishments that offer "only live, stage adult entertainment in a theatre, adult cabaret, or dinner show type setting" violate the Equal Protection Clause?

LIST OF PARTIES

The Petitioner (Plaintiff) is Richland Bookmart, Inc., a corporation authorized to do business in the State of Tennessee, doing business as Town and Country in Knoxville, Tennessee. Respondent Randall E. Nichols is the District Attorney General covering Knox County, Tennessee, who has authority to enforce Chapter 421 against Petitioner. He is sued in his official capacity.

There are no entities to report or list pursuant to Supreme Court Rule 29.6.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	6
I. THE SIXTH CIRCUIT CORRECTLY HELD THAT THE TENNESSEE LEGISLATURE, BASED ON THE EXPERIENCE OF OTHER JURISDICTIONS, REASONABLY RESTRICTED HOURS OF OPERATION AS A CONSTITUTIONAL MEANS OF ADDRESSING DELETERIOUS SECONDARY EFFECTS	6
II. THE COURTS BELOW CORRECTLY FOUND THAT THE LIMITED EXCLUSION OF CERTAIN LIVE-ENTERTAINMENT ESTABLISHMENTS FROM THE HOURS OF OPERATION RESTRICTIONS WAS RATIONALLY RELATED TO A STEP-BY-STEP LEGISLATIVE REFORM EFFORT TO ADDRESS DELETERIOUS SECONDARY EFFECTS	13
CONCLUSION	16

TABLE OF AUTHORITIES

Page

CASES:

Bamon Corp. v. City of Dayton, 923 F.2d 470 (6th Cir. 1991) 2

Ben Rich Trading, Inc. v. City of Vineland, 126 F.3d 155 (3rd Cir. 1997) 8

Broadway Books, Inc. v. Roberts, 642 F. Supp. 486 (E.D. Tenn. 1986) 10, 11

City of Cleburne v. Cleburne Livings Ctr., 473 U.S. 432 (1985) 14

City of Los Angeles v. Alameda Books, Inc., 535 U.S. ___, 122 S. Ct. 1728 (2002) ..... *passim*

City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986) ..... *passim*

Dima Corporation v. Town of Hallie, 185 F.3d 823 (7th Cir. 1999) 8

Ellwest Stereo Theater v. Boner, 718 F. Supp. 1533 (M.D. Tenn. 1989) 10, 11

Erie v. Pap's A.M., 529 U.S. 277 (2000) 12, 14, 15

Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999), *cert. denied*, 529 U.S. 1053 (2000) 7

Mitchell v. Com'n on Adult Entertainment Establishments, 802 F. Supp. 1112 (D. Del. 1992), *aff'd*, 10 F.3d 123 (3rd Cir. 1993) 2, 8, 10

National Amusements v. Town of Dedham, 43 F.3d 731 (1st Cir. 1995), *cert. denied*, 515 U.S. 1103 (1995) 8

TABLE OF AUTHORITIES – Continued

Page

Pleasureland Museum, Inc. v. Beutter (Mayor, City of Mishawaka), 288 F.3d 988 (7th Cir. 2002) 2

Richland Bookmart, Inc. v. Nichols, 137 F.3d 435 (6th Cir. 1998), *rehearing and suggestion for rehearing en banc denied* (1998) ..... *passim*

Richland Bookmart, Inc. v. Nichols, 278 F.3d 570 (6th Cir. 2002), *rehearing and suggestion for rehearing en banc denied* (2002) ..... *passim*

Schultz v. City of Cumberland, 26 F. Supp. 2d 1128 (W.D. Wis. 1998), *aff'd*, 228 F.3d 831 (7th Cir. 2000) 7

Scope Pictures of Missouri, Inc. v. City of Kansas City, 140 F.3d 1201 (8th Cir. 1998) 2

Star Satellite Inc. v. City of Biloxi, 779 F.2d 1074 (5th Cir. 1986) 8, 10

Tee & Bee, Inc. v. City of West Allis, 936 F. Supp. 1479 (E.D. Wis. 1996) 12

Wall Distributors, Inc. v. City of Newport News, 782 F.2d 1165 (4th Cir. 1986) 2

STATE STATUTES:

Tenn. Code Ann. §§ 7-51-1401 – 1406 (1995 Tenn. Pub. Acts, Ch. 421) 1

Tenn. Code Ann. § 7-51-1405 13

Tenn. Code Ann. § 39-13-511 (1994 Tenn. Pub. Acts, Ch. 542) 5, 14

STATEMENT OF THE CASE

Tennessee's Adult-Oriented Establishment Act, enacted as 1994 Tenn. Pub. Acts, Chapter 421 and codified at Tenn. Code Ann. §§ 7-51-1401 – 1406 ("Chapter 421"), makes clear on its face, both in its preamble and body, that the Tennessee legislature intended to address the deleterious secondary effects of types of adult-oriented establishments by two reasonable and independent means: (a) restrictions on the hours of operation of certain adult-oriented establishments and (b) restrictions on the configuration and viewability of booths in adult-oriented establishments. Chapter 421's preamble and legislative history demonstrate that it is intended to address deleterious "secondary effects" on the community from types of adult-oriented establishments, including, but not limited to, "crime, noise, traffic congestion, police response time and efforts, parking problems, sexual disease, sexual activities, and discarded pornographic material on neighboring properties." Chapter 421 preamble, 12th "Whereas" clause (Pet. App. G).

The procedural history of the case is set forth in the Sixth Circuit's decision vacating the district court's injunction and finding that Chapter 421 does not violate the First Amendment, is not unconstitutionally overbroad, and is not unconstitutionally vague, 137 F.3d 435, 437-38 (6th Cir. 1998), *rehearing and suggestion of rehearing en banc denied* (*"Richland Bookmart I"*) (Pet. App. D), and in the Sixth Circuit's decision affirming the judgment of the district court, following remand, that Chapter 421 does not violate the Equal Protection Clause. 278 F.3d 570, 572-74 (6th Cir. 2002) (2-1 decision), *rehearing and suggestion for rehearing en banc denied ("Richland Bookmart II")* (Pet. App. A & B).

Petitioner operates an "adults only" bookstore and/or video store that sells and distributes books and magazines and rents or sells videos consisting of sexually oriented material for off-premises usage. It is an "adult-oriented establishment" under Section 2(4) of Chapter 421. Prior to the effective date of Chapter 421, petitioner filed this action challenging the Act, both facially and as applied, under the First and Fourteenth Amendments to the United States Constitution.[1] Petitioner alleged that the limited exception in Chapter 421's hours of operation restrictions for certain adult-oriented establishments violated the Equal Protection Clause. R. 1, Complaint.[2]

Initially, the district court preliminarily enjoined enforcement of Chapter 421. R. 14, Memorandum Opinion granting preliminary injunction; Pet. App. F. In response to an order of the district court directing respondent to show cause why the preliminary injunction should not be made permanent, respondent submitted as exhibits the three-volume legislative history of Chapter 421. This

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[1] Although petitioner sought to invalidate the entire act, petitioner's adult book and video store does not operate on-premises viewing booths, and petitioner has not challenged the extensive legislative record in this case demonstrating deleterious secondary effects clearly associated with closed on-premises viewing booths (especially the health concerns associated with anonymous and unprotected sexual activity occurring therein). "Open booth" requirements appear to be universally upheld. *See, e.g., Pleasureland Museum, Inc. v. Beutter (Mayor, City of Mishawaka),* 288 F.3d 988, 1003-04 (7th Cir. 2002); *Scope Pictures of Missouri, Inc. v. City of Kansas City,* 140 F.3d 1201, 1204 (8th Cir. 1998); *Mitchell v. Com'n on Adult Entertainment Establishments,* 10 F.3d 123, 139-44 (3rd Cir. 1993); *Bamon Corp. v. City of Dayton,* 923 F.2d 470 (6th Cir. 1991); *Wall Distributors, Inc. v. City of Newport News,* 782 F.2d 1165, 1167 (4th Cir. 1986).

[2] "R. ___" refers to the district court Docket Entry number.

included, as referenced in the preamble of Chapter 421, numerous studies, case law, and information from other jurisdictions regarding secondary effects of adult-oriented establishments that were reviewed by the Act's sponsor and available for review by the legislature. *See* R. 21, Respondent's Response to Show Cause Order ("Show Cause Response"), with exhibits, Vol II, 154-494 (information available from approximately fifteen jurisdictions). Written and oral testimony before the legislature included pictures and graphic descriptions of the unhealthy and unsanitary conditions discovered within Memphis, Tennessee, adult bookstores, the commonplace anonymous solicitations for sexual activities within these establishments, and the serious health and safety concerns documented by health care professionals. *See, e.g.*, R. 21, Show Cause Response, Exhibits, Vol. I (transcript of legislative record), 10-11, 13-18, 21-22, 125-27 & Vol. 3 (written testimony), 495-98, 502-06, 508-17, 532-37, 541-45.

Contrary to petitioner's assertion, petitioner was not denied the opportunity to object to the reasonableness of the Tennessee legislature's reliance on the experience of other jurisdictions, including case law, to support hours of operation restrictions as a reasonable means of addressing deleterious secondary effects. Petitioner replied to respondent's show cause response, provided a newspaper article, submitted an affidavit regarding operating hours of certain business establishments, and attempted to distinguish the studies, case law, and other information related to deleterious secondary effects from other jurisdictions. R. 23 & 24, Petitioner's Reply to Respondent's Show Cause Response, with Affidavit of Arthur R. Anderson. Although

it had the opportunity, petitioner did not introduce expert or other evidence to refute the State's reasonable reliance on the experience of the other jurisdictions. Petitioner never requested from either the district court or the Sixth Circuit the opportunity to conduct discovery or to present proof regarding this issue.

Without reaching the equal protection issue, the district court ordered its preliminary injunction to become a permanent injunction. R. 25 & 26, Memorandum & Order making injunction permanent; Pet. App. E. In *Richland Bookmart I*, the Sixth Circuit held that Chapter 421 was intended by the Tennessee legislature to further the "substantial government interest" of reducing the deleterious secondary effects surrounding adult-oriented establishments. The Sixth Circuit concluded that Chapter 421 should be treated as "content neutral" and should therefore be analyzed under an intermediate scrutiny test as a form of time, place, and manner regulation, like the zoning ordinance in *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 46-52 (1986). *Richland Bookmart I*, 137 F.3d at 438-40. In the Sixth Circuit's view, "the real question [was] one of reasonableness[:]"

> The Tennessee legislature reasonably relied on the experiences of other jurisdictions in restricting the hours of operation. It is not unreasonable to believe that such regulation of hours of shops selling sex literature would tend to deter prostitution in the neighborhood at night or the creation of drug "corners" on the surrounding streets. By deterring such behavior, the neighborhood may be able to ward off high vacancy rates, deteriorating store fronts, a blighted appearance and the lowering of property values of homes and shopping areas. Such regulation may prevent the

> bombed-out, boarded-up look of areas invaded by such establishments. At least that is the theory, and it is not unreasonable for legislators to believe it based on evidence from other places.

137 F.3d at 440-41. The court of appeals further emphasized that adult-oriented establishments are still open during many hours during the week and concluded that Chapter 421 "leaves open alternative avenues of communication." *Id.* at 441. The Sixth Circuit concluded that Chapter 421 was neither unconstitutionally overbroad nor vague, and remanded the case to the district court for consideration of the equal protection challenge. *Id.*

Section 6 of Chapter 421 contains a limited exemption for adult-oriented establishments offering "only live, stage adult entertainment in a theatre, adult cabaret, or dinner show type setting" from the Act's "opening and closing time limitations." Previously, in 1994, the legislature had passed Tennessee's Public Indecency Act, Tenn. Code Ann. § 39-13-511, which in part makes it a misdemeanor offense knowingly or intentionally to appear in public in a "state of nudity." Consequently, a performer at a live entertainment adult-oriented establishment has to wear, at a minimum, "pasties" and a "g-string" in order to comply with Tennessee's public indecency law. On remand the district court correctly applied a rational basis test and found that the limited exemption in Section 6 of Chapter 421 does not violate the Equal Protection Clause. R. 56 & 57, Memorandum & Order granting respondent summary judgment; Pet. App. C. The Sixth Circuit affirmed. *Richland Bookmart II,* 278 F.3d at 572-578. The lower courts reasoned that it was not unconstitutional for the Tennessee legislature to take a step-by-step approach in addressing the issue of deleterious secondary effects created by

adult-oriented establishments. Furthermore, there was no allegation or showing of any invidious discrimination on the part of the Tennessee legislature in exempting certain live entertainment establishments from the operating hours restrictions. *Id.* at 574-76.

REASONS FOR DENYING THE PETITION

I. THE SIXTH CIRCUIT CORRECTLY HELD THAT THE TENNESSEE LEGISLATURE, BASED ON THE EXPERIENCE OF OTHER JURISDICTIONS, REASONABLY RESTRICTED HOURS OF OPERATION AS A CONSTITUTIONAL MEANS OF ADDRESSING DELETERIOUS SECONDARY EFFECTS.

The Sixth Circuit correctly concluded that Chapter 421 serves a substantial governmental interest by reducing the deleterious secondary effects of adult-oriented establishments that is unrelated to the suppression of speech and properly treated the act as "content-neutral." *Richland Bookmart I*, 137 F.3d at 437-41. Nothing in this conclusion conflicts with this Court's decision in *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. ___, 122 S.Ct. 1728 (2002).

This Court has not abandoned the intermediate scrutiny test, set forth in *Renton,* 475 U.S. at 46-50, for analyzing the constitutionality of time, place, and manner regulations. This Court continues to adhere to the principle enunciated in *Renton* that a governmental regulation will be upheld as long as it is shown to be designed to serve a substantial government interest and that reasonable alternative avenues of communication remain available. 475 U.S. at 50. The decision of the Sixth Circuit that

Chapter 421 is valid under the intermediate scrutiny test is not in conflict with this Court's clarification of "the standard for determining whether [a regulation] serves a substantial government interest under *Renton*[,]" as set forth in *Alameda Books,* 535 U.S. at ___, 122 S.Ct. at 1733 (plurality opinion). Consistent with the holding in *Alameda Books,* the Sixth Circuit properly found that:

> reducing crime, open sex and solicitation of sex and preserving the aesthetic and commercial character of the neighborhood surrounding adult establishments is a "substantial government interest." The Tennessee Legislature reasonably relied on the experiences of other jurisdictions in restricting the hours of operation.

Richland Bookmart I, 137 F.3d at 440.

The Sixth Circuit, like numerous other circuits, has properly applied the intermediate scrutiny test from *Renton* to uphold hours of operation restrictions as a constitutional time, place, or manner restriction intended to address deleterious secondary effects of adult-oriented establishments. When enacting Chapter 421 the Tennessee legislature relied in part upon the experience of other jurisdictions, including the case law upholding identical or similar hours of operation restrictions. No Circuit has found such reasonable hours of operation restrictions to be unconstitutional. *See, e.g., Richland Bookmart I,* 137 F.3d at 437-41; *Schultz v. City of Cumberland,* 26 F. Supp. 2d 1128, 1145-46 (W.D. Wis. 1998), *aff'd,* 228 F.3d 831, 846 (7th Cir. 2000) (upheld finding that allowing sexually-oriented businesses to operate only 10 a.m. until midnight Monday through Saturday is constitutional); *Lady J. Lingerie, Inc. v. City of Jacksonville,* 176 F.3d 1358, 1363-65 (11th Cir. 1999), *cert. denied,* 529 U.S. 1053 (2000)

(reviewing the hours of operation restrictions as a whole, the court upheld city's restriction that adult establishments could not open before noon every day and must close by 2 a.m.); *Dima Corporation v. Town of Hallie,* 185 F.3d 823 (7th Cir. 1999) (upheld ordinance specifying adult-oriented establishments may not be open between 2 a.m. and 8 a.m. Monday through Friday, between 3 a.m. and 8 a.m. on Saturday and between 3 a.m. and noon on Sunday); *Ben Rich Trading, Inc. v. City of Vineland,* 126 F.3d 155, 160-63 (3rd Cir. 1997) (upheld city ordinance prohibiting opening of sexually oriented business before 8 a.m. or after 10 p.m. Mondays through Saturdays or on any Sunday or legal holiday); *National Amusements v. Town of Dedham,* 43 F.3d 731 (1st Cir. 1995), *cert. denied,* 515 U.S. 1103 (1995) (upheld town by-law prohibiting licensed entertainment businesses (including traditional theater multiplex) from operating between 1 a.m. and 6 a.m. due to secondary effects); *Mitchell v. Com'n on Adult Entertainment Establishments,* 802 F. Supp. 1112 (D. Del. 1992), *aff'd,* 10 F.3d 123, 130-39 (3rd Cir. 1993) (upheld Delaware's requirement that adult establishments must close between 10 p.m. to 8 a.m., Monday through Saturday, and all day Sundays and holidays); *Star Satellite Inc. v. City of Biloxi,* 779 F.2d 1074, 1079-80 (5th Cir. 1986) (overturned preliminary injunction prohibiting enforcement of hours of operation restrictions identical to those contained in Chapter 421).

In contrast to the situation in *Alameda Books*, the Tennessee legislature did not principally rely upon its own study, but focused upon the experience of other jurisdictions regarding the validity of hours of operation restrictions. This Court has consistently held, as first expressed in *Renton,* 475 U.S. at 51-52, that "the First Amendment

does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to problem the city addresses." Cited with approval in *Alameda Books,* 535 U.S. at ___, 122 S.Ct. at 1736 (plurality opinion). The plurality in *Alameda Books* rejected the dissenters' requirement that the government "[i]n effect . . . demonstrate, not merely by appeal to common sense, but also with empirical data, that its [regulation] will successfully lower crime." *Alameda Books,* 535 U.S. at ___, 122 S.Ct. at 1736.

There can be no question the Tennessee legislature adopted Chapter 421 as a means of addressing commonly recognized deleterious secondary effects associated with certain types of adult-oriented establishments. As noted by the Sixth Circuit, the preamble of Chapter 421 specifically refers to land use studies and other experiences in other jurisdictions, as well as to the experience of the citizens and public officials within Tennessee, as providing convincing evidence of deleterious secondary effects of adult-oriented establishments, including increased crime, downgrading of property values, and the spread of sexually transmitted and communicable diseases. *Richland Bookmart I,* 137 F.3d at 437. The record shows that the sponsor and the other members of the legislature considered or had available to them studies (or their summaries), plus case law, from other jurisdictions documenting the existence of the deleterious secondary effects. R. 21, Show Cause Response, Exhibits, Vol. I, 112, 114 & Vol. II, 154-494.

The Tennessee legislature also specifically cited and relied upon the judicial experience of other jurisdictions,

where courts had upheld the same, or even more stringent, restrictions on hours of operations of adult-oriented establishments as a means of curbing secondary effects. *See* Chapter 421 preamble, 12th "Whereas" Clause, citing *Mitchell,* 10 F.3d 123 (3rd Cir. 1993) and *Star Satellite Co., Inc. v. City of Biloxi,* 779 F.2d 1074 (5th Cir. 1986). Although, as noted by petitioner, Chapter 421 was remanded to committee for further review of the preamble's "whereas" recitals, the legislature specifically received testimony regarding case law upholding hours of operation and open booth restrictions. *See, e.g.,* R. 21, Show Cause Response, Exhibits, Vol. I, 42-43, 49, 61-66, 70-73, 75-80, 120-23. As previously noted, circuit courts have universally upheld hours of operation restrictions in other jurisdictions.

Furthermore, the legislature reasonably relied upon judicial findings regarding experiences in Nashville and Chattanooga, Tennessee. *Ellwest Stereo Theater v. Boner,* 718 F. Supp. 1533, 1577 (M.D. Tenn. 1989) (upheld Nashville ordinance restricting hours of operation of adult-oriented establishments, finding that such restrictions are particularly "justified by the difficulty of policing and enforcing the ordinance in the wee hours of the morning"); *Broadway Books, Inc. v. Roberts,* 642 F. Supp. 486 (E.D. Tenn. 1986) (upholding hours of operation restrictions in Chattanooga adult-oriented establishment ordinance). These cases recited evidence that sex-related crimes, some committed by employees or entertainers at adult-oriented establishments, increase at or near adult-oriented establishments. Furthermore, these cases document that anonymous and public sexual activities occurring within adult arcades (wherein condoms, semen, blood, defecation, and urine are present) create a serious health hazard.

Ellwest Stereo Theater, Inc., 718 F. Supp. at 1562-64; *Broadway Books, Inc.*, 642 F. Supp. at 491.

The Tennessee legislature also received written and oral testimony, particularly regarding adult-oriented bookstores with viewing arcades in Memphis, Tennessee. Testimony illustrated the presence of fresh semen, urine, and feces, as well as blatant solicitations for anonymous and unhealthy sexual activity within viewing arcades. Testimony indicated that the Memphis establishments were generally open 24 hours a day, 365 days per year. The legislature understood that often prostitutes congregate at or near adult-oriented establishments. A business adjoining a Memphis adult bookstore had reported the need to sweep up used condoms and needles daily left behind by bookstore patrons who used the business parking lot late at night. *See, e.g.*, R. 21, Show Cause Response, Exhibits, Vol. I, 10-11, 13-18, 21-22, 125-27 & Vol. III, 495-98, 502-04, 508-09, 544-45. Testimony from medical professionals documented the health risks, including the increase in HIV and sexually transmitted diseases, that may be associated with the sexual activity and unhealthy conditions described as associated with adult-oriented establishments. *See, e.g.*, R. 21, Show Cause Response, Exhibits, Vol. III, 502-06, 510-17, 532-37, 541-43.

Chapter 421's preamble and legislative history, including an exhibit volume of studies and information from other jurisdictions regarding secondary effects, were presented to the district court as part of respondent's show cause response opposing a permanent injunction and were before the Sixth Circuit. R. 21. Petitioner did not present sufficient evidence to dispute the evidence upon which the legislature relied although it was afforded the opportunity

to do so. Moreover, petitioner never requested an opportunity from the district court or the Sixth Circuit to present further proof to dispute the government's rationale for Chapter 421. Therefore it is not appropriate to remand this case for the purpose of reopening the proof.

As this Court has acknowledged, legislative bodies are "in a better position than the Judiciary to gather and evaluate data on local problems." *Alameda Books,* 535 U.S. at ___, 122 S.Ct. at 1737; *citing Erie v. Pap's A.M.,* 529 U.S. 277, 297-98 (2000) (plurality opinion). Guided by the principle of *Renton* that "content neutral" regulations should receive only intermediate scrutiny, this Court's "cases require only that [governmental entities] rely upon evidence that is 'reasonably believed to be relevant' to the secondary effects that they seek to address." *Alameda Books,* 535 U.S. at ___, 122 S.Ct. at 1737-38. In light of the preamble, legislative history, and information available to Tennessee's legislature in connection with the enactment of Chapter 421, the Sixth Circuit properly concluded that the legislature's selection of hours restrictions as a means of addressing secondary effects "is not unreasonable[.]" *Id.* at 441. It was reasonable for the legislature to conclude that the impact of the recognized deleterious secondary effects on the community from adult-oriented establishment is even greater during traditional non-work times, especially when family and community activities are conducted. *See Tee & Bee, Inc. v. City of West Allis,* 936 F. Supp. 1479, 1492 (E.D. Wis. 1996) (upholding hours of operation restrictions as furthering "articulated goals of preventing crime and preserving the quality of neighborhoods," the court noted that hours restrictions occur when crime is more likely, when law enforcement personnel are

more likely to be busy with other matters, and that "special precautions" may be warranted "during those times when people are generally sleeping and when peaceful enjoyment of the home is most important."). The decision below is thus fully consistent with the pertinent precedents of this Court and with the decisions of other courts of appeals addressing the constitutionality of similar hours of operation restrictions.

II. THE COURTS BELOW CORRECTLY FOUND THAT THE LIMITED EXCLUSION OF CERTAIN LIVE-ENTERTAINMENT ESTABLISHMENTS FROM THE HOURS OF OPERATION RESTRICTIONS WAS RATIONALLY RELATED TO A STEP-BY-STEP LEGISLATIVE REFORM EFFORT TO ADDRESS DELETERIOUS SECONDARY EFFECTS.

In *Richland Bookmart II*, the district court and the Sixth Circuit correctly determined that the limited exemption from Chapter 421's hours of operations restrictions is not unconstitutional under the Equal Protection Clause.[3] That conclusion was dictated by a straightforward application of this Court's prior decisions and does not warrant further review.

Under the Fourteenth Amendment, similarly situated persons should be treated equally. Statutes will withstand

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[3] The exemption in Section 6 of Chapter 421 [codified at Tenn. Code Ann. § 7-51-1405] from hours of operation restrictions is limited to certain adult-oriented establishments, offering "only live, stage adult entertainment in a theatre, adult cabaret, for dinner show type setting[.]"

equal protection scrutiny if they bear a rational relationship to a legitimate state interest, as long as they do not interfere with fundamental rights or single out suspect classifications. *City of Cleburne v. Cleburne Livings Ctr.*, 473 U.S. 432, 439-40 (1985). Obviously, adult bookstore owners are not a suspect classification entitled to heightened protection. Nor on this record can it be argued that the exemption is the product of invidious discriminatory animus against adult bookstore owners and in favor of live cabarets. *Richland Bookmart II*, 278 F.3d at 574-75.

This Court's "settled position [is] that [government] must be given a 'reasonable opportunity to experiment with solutions' to address the secondary effects of protected speech." *Alameda Books*, 535 U.S. at ___, 122 S.Ct. at 1736 (plurality opinion), *citing Renton*, 475 U.S. at 52 (*quoting Young v. American Mini Theaters, Inc.*, 427 U.S. at 71 (plurality opinion)). In 1994, the Tennessee legislature adopted the Public Indecency Act, 1994 Tenn. Pub. Acts, Ch. 542 (codified at Tenn. Code Ann. § 39-13-511), to curb the deleterious secondary effects of public nudity, including that occurring at live adult-oriented cabarets and similar venues. The constitutionality of such a regulatory scheme, which in effect requires entertainers at such venues to wear, at a minimum, "pasties" and "g-strings," as a means of addressing deleterious secondary effects, has been sustained under this Court's decision in *Erie v. Pap's A.M.*, 529 U.S. at 296-302.[4] Thus, Tennessee has not

[4] In 1999, the Sixth Circuit upheld the constitutional validity of Tennessee's Public Indecency Act, in a lawsuit that was filed by owners and operators of multiple nude dancing establishments prior to the act's July 1994 effective date. *See Richland Bookmart II*, 278 F.3d at 573, *citing In re: Tennessee Public Indecency Statute*, Nos. 96-6512, 96-6573,

(Continued on following page)

singled out the secondary effects associated with adult bookstores for special restrictions while leaving unregulated those effects associated with live performance venues. Rather, the legislature has targeted the secondary effects caused by both forms of adult entertainment evenhandedly and comprehensively, but with a view towards ensuring that the restrictions imposed on each "be no greater than necessary to further the [State's] interest." *Erie v. Pap's A.M.*, 529 U.S. at 301. Although the legislature could have chosen to subject adult-oriented live performance venues to Chapter 421's hours restrictions, petitioner cites no authority for the proposition that it was required to do so. Moreover, there is no basis for assuming that the Tennessee legislature would not amend Chapter 421 in the future to include the exempted businesses if the Public Indecency Act proves ineffective in eliminating the deleterious secondary effects caused by adult-oriented live performance venues. *See generally Renton*, 475 U.S. at 50-54.

As the court of appeals correctly observed, "[t]he Tennessee legislature arrived at a plausible step-by-step approach to addressing" the deleterious secondary effects associated with both adult bookstores and live cabarets which "bears a rational relation to a legitimate governmental purpose." *Richland Bookmart II*, 278 F.3d at 578. Since the legislative scheme neither draws suspect classifications nor betrays any invidious discriminatory

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97-5924, 97-5938, 1999 WL 55276 (6th Cir. Jan. 13, 1999) (unpublished table decision).

intent, it fully comports with this Court's equal protection jurisprudence.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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